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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/611,839   | 07/01/2003  | David C. Roberts     | 025636-0105         | 5143             |
| 26371  | 7590        | 04/15/2005           | EXAMINER            |                  |
| FOLEY & LARDNER<br>777 EAST WISCONSIN AVENUE<br>SUITE 3800<br>MILWAUKEE, WI 53202-5308 |             |                      | BUSHEY, CHARLES S   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1724                |                  |

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/611,839

Applicant(s)

ROBERTS ET AL

Examiner

Scott Bushey

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2004 and 10 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 6-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7-1-03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of Group I, claims 1-5 in the reply filed on September 30, 2004 is acknowledged. The traversal is on the grounds that the inventions are not independent, and in view of the amendments to non-elected claims 13 and 21, all of the claims can be examined together and efficiently. This is not found persuasive because, as applicant should know, MPEP 803 "Restriction – When Proper" states, **"Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct".** Further, with respect to the amendments made in non-elected independent claims 13 and 21, wherein applicant has added an evaporative medium pad to the previous claim language, claims 13 and 21 are still patentably distinct from the claims of the elected invention, since they do not require either the pump or the fan, as required by the claims of the elected invention I.

The requirement is still deemed proper and is therefore made FINAL.

2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).
3. Applicant should note that with regard to the comments concerning the status identifiers of the claims, claims 6-24 are withdrawn and should have been indicated as such in the

Art Unit: 1724

amendment to the claims filed with the election. The fact that the restriction requirement has now been made final does not in any way effect the status of the claims as either pending claims or withdrawn claims. Claims 6-24 were withdrawn at the time applicant elected, with or without traverse, to prosecute the invention of Group I, claims 1-5. Further, non-elected, withdrawn claims 6-24 will continue to be pending claims within the application until either applicant cancels them, or consents to their cancellation by the Examiner in a formal Examiner's Amendment. Applicant should note that any future amendment to the claims, which does not properly identify the current status of each of the claims will not be entered as being an improper amendment.

#### *Specification*

4. The abstract of the disclosure is objected to because legal phraseology, i.e., "comprises" and "comprising", should be avoided in the abstract. Correction is required. See MPEP § 608.01(b).

#### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by VanNess et al (Figs. 5 and 12; col. 2, lines 31-38, 48-52, 59-63; col. 5, lines 11-26; col. 6, lines 8-9; col. 7, lines 49-55, 64-65; col. 8, lines 1-2).

Applicant should note that the reference clearly teaches connecting corrosion resistant housing elements using corrosion resistant connection means, thus forming a joint at the connection that is corrosion resistant in all aspects. The fact that the materials used for each of the housing elements and the fasteners are entirely corrosion resistant, at least anticipates like materials having a corrosion resistant coating.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanNess et al taken together with the admitted prior art, and further in view of either Lefevre et al or Aull et al.

VanNess et al (Figs. 5 and 12; col. 2, lines 31-38, 48-52, 59-63; col. 5, lines 11-26; col. 6, lines 8-9; col. 7, lines 49-55, 64-65; col. 8, lines 1-2) as applied above discloses an evaporative cooling apparatus similar to that as claimed by applicant, including corrosion resistant fastening

Art Unit: 1724

means for attaching corrosion resistant housing elements, including the base and sidewalls, in a manner so as to provide a corrosion resistant joint.

Applicant admits at page 2 of the instant application that it is well known to join coated metal sheets by a punch and die process to form leak proof joints, as desired by applicant.

Applicant contends that it is not known to provide such punch and die press connections of sheets within the evaporative cooling art.

Lefevre et al (Figs. 8-11; col. 1, lines 20-44) and Aull et al (Figs. 4-7, 10; Abstract) each alternatively disclose that it is known within the evaporative cooling art to join two sheets of like material together to form a corrosion resistant joint using a punch and die press. It would have been obvious to an artisan at the time of the invention, to utilize the admitted known punch and die sheet joining means, in view of the teachings by either of Lefevre et al or Aull et al, to provide a corrosion resistant joint between the housing elements of the evaporative cooler as taught by VanNess et al.

10. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference combination as applied to claims 1-3 above, and further in view of Master Cool II, "The Most Efficient Evaporative Cooler You Can Buy".

The reference combination as applied to claims 1-3 above, substantially discloses applicant's invention as recited by instant claims 4 and 5, except for the corrosion resistant coating on the housing elements being in the form of a multi-layer powder coated finish.

Master Cool II, "The Most Efficient Evaporative Cooler You Can Buy" (the paragraph under the heading POLYBOND Finish) teaches applicant's desired multi-layer powder coated finish. It would have been obvious to an artisan at the time of the invention, to modify the

Art Unit: 1724

apparatus as taught by the reference combination as applied to claims 1-3 above, to include a multi-layer powder coated finish, in view of the Master Cool II reference, since such would provide a coating that should last up to 10 years in a hostile environment, according to the Master Cool II reference.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is (571) 272-1153. The examiner can normally be reached on Monday-Thursday 6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Bushey  
Primary Examiner  
Art Unit 1724

csb  
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